

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10644 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL KARIM AMADBHAI KAPADIA

Versus

COMMISSIONER OF POLICE

Appearance:

MR DJ BHATT FOR MR RR MARSHALL for Petitioner

AGP MR SAMIR DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/09/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Shri D.J. Bhatt for Mr.
R.R. Marshal on behalf of the petitioner and learned
A.G.P. Mr. Samir Dave for respondent Nos. 1 to 3.

2. The detention order dtd. 30/11/98 passed by the
respondent NO. 1 - Commissioner of Police, Surat City,
Surat, against the petitioner in exercise of powers
conferred under Sec. 3 (1) of Gujarat Prevention of

Anti-social Activities Act, 1985 (PASA for short), is challenged in the present petition under Article 226 of the Constitution of India.

3. The petitioner has produced grounds of detention supplied by the respondent NO. 1 - detaining authority, under Sec. 9 (1) of the PASA. Perusal of the said grounds indicate inter-alia that two criminal cases dtd. 19/12/95 and 12/6/98 are registered against the petitioner at Athwalines Police Station for the offences made punishable under Indian Penal Code. It also indicate that two witnesses on assurance of anonymity have given statements dtd. 19/10/98 and 20/10/98 against the petitioner and his antisocial activities. That in consideration of the said material of criminal cases as well as the statements of anonymous witnesses, respondent No. 1 has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Sec. 2 (c) of PASA. That resort to enforcement of general law is insufficient to prevent the petitioner from continuing his antisocial activity which is likely to affect prejudicially to the maintenance of public order and as such the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds.

It has been contended on behalf of the petitioner that the ground of detention does not disclose any live-link between the alleged anti-social activities of the petitioner and the date on which impugned order is passed. That in absence of reasonable explanation, the delayed action taken by the Respondent NO. 1, has vitiated the subjective satisfaction and has rendered the impugned order invalid. It is also submitted that the detaining authority has failed to provide the documents regarding bail application and order in respect to the registered case against the petitioner. Furthermore the true translation of injury certificate dtd. 16/6/98, copy of which is produced at page 50 of the compilation contain factually incorrect statement as per copy produced vide page 51 of the compilation. That thereby the petitioner was prevented from making effective representation against his detention which amounts to violation of the fundamental right of the petitioner guaranteed vide Article 22 (5) of the Constitution and as such continued detention of the petitioner has become illegal and deserves to be set aside.

That to support the submissions, reliance is placed on the following authorities.

- (a) Elesh Nandubhai Patel Vs. C.P.Singh, reported
vide 1997 (2) G.L.H., 1357,
- (b) P.U. Abdul Raheman Vs. Union of India, reported
vide 1991 (2) (Suppl.) SCC 274, and
- (c) Pawnammal Vs. State of T.N. and Ors, reported
vide 1992(2) SCC 413.

5. Scrutiny of the facts emerging from the grounds of detention suggest that criminal cases are registered against the petitioner on 19/12/95 and 12/6/98, respectively. That the statements of two anonymous witnesses are recorded on 19/10/98 and 20/10/98. However, the facts stated by the said witnesses are not only vague and general but relate to the incidents which occurred four months ago and three months ago respectively. Thus, the grounds of detention does not disclose any fact in respect to alleged criminal activities of the petitioner in between June-July, 1998 to 30/11/1998, the date on which the impugned order is passed. Not only that the grounds of detention is devoid of any fact to provide any explanation much less reasonable explanation to show the nexus between the alleged antisocial activities and impugned action of the authority of passing the detention order. That the live-link between the alleged activity and taking of action appears to have been snapped due to passage of time from June 1998 to November, 1998. The respondents have failed to file any affidavit in reply and as such in absence of reasonable explanation in respect to delayed action, the impugned order could not be sustained in view of the provisions of law expressed in the matter of Elesh Nandubhai (Supra)

6. Learned A.G.P. Shri Samir Dave appearing for the respondents could not explain the discrepancy in respect to incorrect translation of the injury certificate (copy on page 50-51) provided to the detenu. That the petitioner has amended the petition to add additional grounds vide para 3 (L) to 3 (V). However, in absence of any affidavit of reply Learned A.G.P. Mr. Samir dave could not dispute the fact regarding non-supply of vital documents of bail application and order as well as for in correct translation of the injury certificate. In view of the said facts, it has to be held that the constitutional imperative under Article 22 (5) having been breached the continued detention of the petitioner,

is illegal and impugned order is required to be quashed and set aside.

7. The petition succeeds on the above stated sole point and therefore, it is not necessary to consider other points urged at the bar.

8. On the basis of aforesaid discussion, the petition is allowed. The impugned order dtd. 30/11/98 passed by the respondent NO. 1 - Commissioner of Police, Surat City, Surat against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Abdul Karim Amadbhai Kapadia is ordered to be set at liberty forthwith, if not required in any other case.

Rule is made absolute.

Rafik*